S.B. Civil Revision Petition No.170/2004
(Smt. Preeti Chopra Vs. M/s Roopraj Gyanmal and Ors.)

Date : 16.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr.D.R. Bhora, for the petitioner
Mr.S.R. Soni)
Mr.Om Mehta) for the respondents

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Heard learned counsel for the parties.

It appears that the confusion arose because of the language used in the order dated 28.11.2002 by which the executing court decided the objection petition No 34/2002 of the objector petitioner. In order dated 28.11.2002 the executing court passed the following order :-

> "परिणामत: आपत्तिकर्ता का आपत्ति प्रार्थना पत्र अन्तर्गत आदेश 21 नियम 58 सी.पी.सी. आंशिक रूप से इस सीमा तक स्वीकार किया जाता हैं कि उक्त प्लोट नं. 57, 58 में आपत्तिकर्ता के हिस्से की भूमि 41.80 वर्ग गज को कुर्की से मुक्त किया जाता हैं।"

The Objector feeling aggrieved submitted review petition No. 15/2003, which was decided by the executing court on 30.7.2003 by passing following order :-

"दिनांक 28.11.02 के आदेश में यह स्पष्ट हैं कि प्लोट संख्या 57 व 58 में जो हिस्सा आपत्तिकर्ता लाईसेन्स को दिया हुआ हैं तथा जिस नक्शे में लाल स्याही से चिन्ह किया गया था, उसे ही कुर्की से मुक्त किया गया। इस विषय में आदेश में किसी प्रकार की अस्पष्ट स्थिति नहीं हैं। अत: यह पिटीशन खारिज किये जाने योग्य हैं।"

In the order dated 28.11.2002 there is a mention that the objection petition under Order 21 Rule 58 CPC is partly accepted and the applicant's share in Plot No. 57 and 58 measuring 41.80 Sq.Gaj. shall not remain attach. The word "applicant's share" caused the confusion and it gave impression that some other person may be co-sharer in Plots No. 57 and 58. It will be relevant to mention here that as per registered lease deed issued in favour of the applicant total measurement of Plots No. 57 and 58 is 41.80 Sq.Gaj. and in the lease deed measurement of both the plots jointly has been mentioned as "900 Sq.Fts. or 83.61 Sq.Mtrs."

By the order dated 30.7.2006, it was further made clear that the land of Plots No. 57 and 58 shown in red boundaries in the licence issued to the objector is the land exempted from attachment.

After above two orders hardly any controversy could

have survived. The executing court made it clear that total exempted land is 41.80 Sq.Gaj. which is equivalent to 900 Sq.Fts. Or 83.61 Sq.Mtrs. The executing court also took into consideration the licence issued in favour of the applicant having attached site plan with the boundaries marked in red ink. The lease deed shown by the learned counsel for the petitioner which was registered on 30.6.2003 clearly reveals that the plots are in the name of only objector and there is no co-sharer in these plots. Therefore, the objector's two Plots No. 57 and 58 are not under attachment after the orders dated 28.11.2002 and 30.7.2003 and therefore, there cannot arise any question of sale of these plots in execution. Learned counsel for the decree-holder frankly admitted that Plots No. 57 and 58 are not attached for recovery of the decree-holder's amount. It is submitted that the Plots No. 57 and 58 which combindly has measurement as 900 Sq.Fts. equivalent to 83.61 Sq.Mtrs. or 41.80 Sq.Gaj. are not going to be sold in execution of the decree. Learned counsel for the decree-holder submits that they want to proceed with the execution to recover the amount from the judgment-debtor who is husband of the objector only and from his properties.

In view of the above it is held that Plots No. 57 and 58 having measurement referred above are not under the attachment and if they are attached their stand not attached after order dated 28.11.2002 and 30.7.2003.

In view of the above admitted position this revision petition is disposed of and the decree-holders will be free to execute the decree forthwith against the judgment-debtor in accordance with law.

[PRAKASH TATIA]J.

RM/